



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Ngo, Lien M.
)	
Lown et al)	Art Unit: 3727
)	
Serial No.: 10/717,044)	
)	
Filed: 11/19/03)	
)	
For: CONTAINER AND SEALING)	
COVER)	
_____)	

DECLARATION

I, John M. Lown, hereby declare as follows:

1. I am the co-inventor of the invention described and claimed in the subject application and the CEO of Snapware Corporation ("Snapware"), the assignee of the application.

2. Our counsel, Mr. Harold L. Jackson, requested that I review the de Vries reference, U.S. Patent No. 6,269,967, relied upon in the Office Action dated April 14, 2005 to reject most of the claims in this application and point out what I believe to be some of the relevant differences between the container disclosed in such reference and our invention. In addition I was asked to comment on the commercial success of the invention and at least one of the reasons why I believe the product has achieved such success.

3. I filed a declaration dated June 5, 2003 in the parent application, serial no., 10/204,684 in which I discussed several references which are no longer being applied. I also attached three emails from customers.

4. My qualifications were set forth in the earlier declaration. However, they are repeated here for the convenience of the Examiner. I attended the University of Phoenix during 1976-1977, majoring in accounting. In 1984 I founded Auto Aid, a chain of retail auto supply stores, and sold the company in 1988. In 1989 I started FloTool Corporation, now Snapware by change of name, on the basis of a patented invention, i.e., an injection molded plastic on/off spout for dispensing oil and antifreeze and other fluids. Following the development of the spout I added other automotive tools and accessories which were marketed through national retail chains. I am the inventor or co-inventor of the following U.S. patents: 5,775,483; 5,419,467; 5,320,232; 5,305,900; 5,135,140; 5,111,977; 5,067,639; and 5,000,360.

5. Around 1995 I directed my attention to food storage products and in particular to developing a snap closure for both small mouth and large mouth containers. The large mouth containers then on the market frequently did not provide a reliable seal for storing food stuffs over a lengthy period and in many cases were not easy to open, especially for those suffering from arthritis or tendinitis. To solve this problem the company, through an industrial design team group, created a large mouth dry food storage container with an effective seal that was easy to open. This product was awarded U.S. Patent No. 5,582,314 ("314 patent") and further awarded a silver metal by the Industrial Designer's Society of America for excellence in design and function. This popular product is not only sold through nationwide chains in this country, but in many foreign countries as well.

6. However, the '314 closure was designed for containers with circular openings to store dry food products. The closure and container described in the '314 patent was not designed as a serving dish for microwave heating and dishwasher cleaning. Following the development of the '314 product, I determined that there was a significant need for a wide mouth sealable

container/closure product (1) capable of storing food such as left overs in the freezer, (2) suitable for placement directly in a microwave oven to allow the left overs to be heated, (3) suitable for use as a serving dish with the lid removed and (4) suitable for dishwasher cleaning. The result is the container/closure described and claimed in this application. In addition, the product had to be relatively inexpensive, e.g., few parts susceptible for manufacturing by conventional injection molding techniques and easy to open and close.

7. Enclosed as Ex. A are questionnaires which were filled out and returned by several users of the product. The consumer's names have been redacted. Snapware is a relatively small company with a very limited advertising budget. However, the container/closure of this application enjoyed sales of 2.51 million, 4.147 million and 4.255 million and 3.542 million during 2002, 2003, 2004 and January to July 2005 respectfully. For the size of our company and the competition we face, such sales are significant. It is to be noted that in 2004 we introduced bowls embodying the invention so that the sales from that year forward included rectangular as well as bowl-shaped containers/cover.

8. The de Vries container, according to the specification, is designed for storage and transportation of industrial powders which are sensitive to compressive stresses and moisture and more particularly to the replacement of standard round containers or drums with rectangular containers to reduce storage space. The de Vries container is not designed for food storage, freezer, microwave or household dishwasher use. It would not be user friendly for those suffering from arthritis or tendinitis, an important selling feature of our invention. For example, the de Vries cover or lid is sealed to the container by a resilient lip on the underside of the lid peripheral edge which is pressed against a downwardly slanting rim on the container edge by hinged clamps. As a result, disengaging the clamps and opening the container would require

some effort which is understandable for industrial containers, but would not meet our goal of making a container which is easily opened. In addition, our goal was to get away from such a compressive seal through the use of a flexible inner cover flange which slides along an upper sealing surface of the container wall with the edge of the cover flange being forced inwardly to form an interference fit. The arrangement provides a liquid tight seal while allowing the cover to be easily opened. The interference fit between the inner cover sealing flange and the container inside sealing surface provides the only seal between the cover and container. The stand off ribs 46 (Fig. 2) prevent the underside of the cover from engaging the upper edge of the container.

9. I have also reviewed the existence of a small downwardly extending protrusion on the de Vries cover which is spaced inwardly from the peripheral edge 40. This protrusion, which I believe was marked A counsel's reproduction of de Vries' Fig. 8, would not function as our cover sealing flange or fin and as far as I can tell it is not referred to in the de Vries patent.

10. I do not see how the de Vries patent would help on of ordinary skill in the art in arriving at our invention. The seal taught by de Vries would have to be discarded and replaced with an entirely different sealing arrangement.

11. While there may be containers in which the perimeter of a flange depending from a cover has a perimeter greater than the perimeter of the inside wall of the container. I am not aware of any cover/container combination that is designed like our invention, e.g., where the sliding contact between a cover fin and the container inside surface provides the only seal thereby enabling the cover to be easily opened and closed with a resulting reliable seal. I have found no prior art cited by the Examiner in the parent or this continuation application which teaches or suggests our invention as called for in the claims.

12. While I do not hold myself out as one trained in the field of patent law, I do believe that our invention has made an important contribution to the household food storage and serving industry and would not have been obvious in view of the prior art.

13. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further, that these statements made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or document or any patent resulting therefrom.

Signed this 18th day of July, 2005 at Tustin, California.



John M. Lown

Member Name: [REDACTED]Member Number: [REDACTED]

Product tested: Snapware Snap 'N' Serve

Completely blacken the circle indicating your choice (LIKE THIS → ●)

Would you recommend the product to fellow Club members? ● Yes ○ No

The suggested retail price is \$19.99

At this price, do you feel this product is a good value? ● Yes ○ No

Please rate the product tested on the criteria listed below. Due to the diversity of products in the test program, some of the criteria may not be applicable. In such cases, please select the "N/A" circle. **COMPLETELY BLACKEN THE CIRCLE INDICATING YOUR CHOICE.**

	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Excellent</u>	<u>N/A</u>
Quality	○	○	○	●	○
Appearance	○	○	○	●	○
Ease of use/preparation	○	○	○	●	○
Clarity of instructions	○	○	○	●	○
Effectiveness	○	○	○	●	○
Performance	○	○	○	●	○
Versatility	○	○	○	●	○
Uniqueness	○	○	○	●	○
Rated against similar products	○	○	○	●	○
Ease of cleaning	○	○	○	●	○
Overall Rating	○	○	○	●	○

Please use this section to describe your main reasons for either recommending or not recommending the product. Excerpts from this report may be published in a future issue of *Cooking Pleasures* magazine, the Club's web site or in the manufacturers marketing and advertising campaigns.

The Snapware Snap 'N' Serve containers are fabulous. They are just the right size for storing most any type food or left overs and the foods were just as fresh as the day they were made. They are just great for stacking as the lids are flat not rounded, and the snap lock lids prevented spills if turned over and they didn't melt when used in the microwave. I have neuropathy in my hands and I had no trouble at all using these containers. They are just SUPER!

Best feature(s): stainproof, shatterproof, snap-lock lids, microwaveable,

Suggested Improvement(s): _____

Additional comments

I had just purchased some whistle Vac containers and they are nothing compared to the Snapware Snap 'N' Serve containers quality.

Thank you for participating in the Cooking Club Product Test Program

To participate in another product test, you must submit a new profile. Please call 1-888-850-8202 to order a profile or go to the club website at cookingclub.com and submit a profile electronically.

Exhibit A

Member Name: XXXXXXXXXXMember Number: XXXXXXXXXX

Product tested: Snapware Snap 'N' Serve

Completely blacken the circle indicating your choice (LIKE THIS → ●)

Would you recommend the product to fellow Club members? ● Yes ○ No

The suggested retail price is \$19.99

At this price, do you feel this product is a good value? ● Yes ○ No

Please rate the product tested on the criteria listed below. Due to the diversity of products in the test program, some of the criteria may not be applicable. In such cases, please select the "N/A" circle. **COMPLETELY BLACKEN THE CIRCLE INDICATING YOUR CHOICE.**

	Poor	Fair	Good	Excellent	N/A
Quality	○	○	○	●	○
Appearance	○	○	○	●	○
Ease of use/preparation	○	○	○	●	○
Clarity of instructions	○	○	○	●	○
Effectiveness	○	○	○	●	○
Performance	○	○	○	●	○
Versatility	○	○	○	●	○
Uniqueness	○	○	●	○	○
Rated against similar products	○	○	○	●	○
Ease of cleaning	○	○	○	●	○
Overall Rating	○	○	○	●	○

Please use this section to describe your main reasons for either recommending or not recommending the product. Excerpts from this report may be published in a future issue of *Cooking Pleasures* magazine, the Club's web site or in the manufacturers marketing and advertising campaigns.

SNAPWARE IS A GREAT ADDITION TO ANYONE'S KITCHEN. SNAPWARE IS VERY PRACTICAL AS WELL AS STYLISH. IT'S VERSABILITY OF GOING FROM REFRIGERATOR TO MICROWAVE TO THE TABLE IS A GREAT PLUS. IT MAKES AN ATTRACTIVE SERVICE DISH ON THE TABLE. THEY DO A GREAT JOB OF SAVING LEFT OVERS AND STACK SO NEATLY.

Best feature(s): EASY TO USE AND KEEPS LEFT OVERS WELL PROTECTED

Suggested Improvement(s): THE INSTRUCTIONS ON THE LID COULD BE EASIER TO READ ~~BUT STILL NOT THAT~~

Additional comments

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Member Number: [REDACTED]

Completely blacken the circle indicating your choice (LIKE THIS → ●)

The suggested retail price is \$19.99

At this price, do you feel this product is a good value? ☒ Yes ☐ No

Please rate the product tested on the criteria listed below. Due to the diversity of products in the test program, some of the criteria may not be applicable. In such cases, please select the "N/A" circle. **COMPLETELY BLACKEN THE CIRCLE INDICATING YOUR CHOICE.**

	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Excellent</u>	<u>N/A</u>
Quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Appearance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Ease of use/preparation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Clarity of instructions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Effectiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Versatility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Uniqueness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Rated against similar products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Ease of cleaning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Overall Rating	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	

Please use this section to describe your main reasons for either recommending or not recommending the product. Excerpts from this report may be published in a future issue of *Cooking Pleasures* magazine, the Club's web site or in the manufacturers marketing and advertising campaigns.

I am completely satisfied with this product. It is quick to open & close even with my arthritis hands. I would recommend it to anyone!

Best feature(s): Snap tight lids

Suggested Improvement(s): None

Additional comments

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Member Name: XXXXXXXXXXMember Number: XXXXXXXXXX

Product tested: Snapware Snap 'N' Serve

Completely blacken the circle indicating your choice (LIKE THIS → ●)

Would you recommend the product to fellow Club members? ● Yes ○ No

The suggested retail price is \$19.99

At this price, do you feel this product is a good value? ● Yes ○ No

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	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Excellent</u>	<u>N/A</u>
Quality	○	○	○	●	○
Appearance	○	○	○	●	○
Ease of use/preparation	○	○	○	●	○
Clarity of instructions	○	○	○	●	○
Effectiveness	○	○	○	●	○
Performance	○	○	○	●	○
Versatility	○	○	○	●	○
Uniqueness	○	○	○	●	○
Rated against similar products	○	○	○	●	○
Ease of cleaning	○	○	○	●	○
Overall Rating	○	○	○	●	○

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The quality is very high standard. They open and
close easily. They are dishwasher safe and
easily fit in the dishwasher. They are stackable
and fit well in the refrigerator. Like the
"hard" plastic construction since it can easily
have hot foods stored in them.

Best feature(s): The side snap downs

Suggested Improvement(s): _____

Additional comments

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At this price, do you feel this product is a good value? ● Yes ○ No

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	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Excellent</u>	<u>N/A</u>
Quality	○	○	○	●	○
Appearance	○	○	●	○	○
Ease of use/preparation	○	○	○	○	●
Clarity of instructions	○	○	○	○	●
Effectiveness	○	○	○	○	●
Performance	○	○	●	○	○
Versatility	○	○	●	○	○
Uniqueness	○	○	●	●	○
Rated against similar products	○	○	○	●	○
Ease of cleaning	○	○	○	●	○
Overall Rating	○	○	○	●	○

Please use this section to describe your main reasons for either recommending or not recommending the product. Excerpts from this report may be published in a future issue of *Cooking Pleasures* magazine, the Club's web site or in the manufacturers marketing and advertising campaigns.

I think this Snapware Snap 'n' Serve is great. It isn't hard to get closed and the two snaps make it seal real easy for stiff fingers. Also the Clear Container is nice so you can see what you have in it. Take it out of the fridge + put it in the microwave + open the vents. Just great

Best feature(s): *The snap on lid with the microwave vent*

Suggested Improvement(s): _____

Additional comments

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Member Name: XXXXXXXXXXMember Number: XXXXXXXXXX

Product tested: Snapware Snap 'N' Serve

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	<u>Poor</u>	<u>Fair</u>	<u>Good</u>	<u>Excellent</u>	<u>N/A</u>
Quality	○	○	○	●	○
Appearance	○	○	○	●	○
Ease of use/preparation	○	○	○	●	○
Clarity of Instructions	○	○	○	●	○
Effectiveness	○	○	○	●	○
Performance	○	○	○	●	○
Versatility	○	○	○	●	○
Uniqueness	○	○	○	●	○
Rated against similar products	○	○	○	●	○
Ease of cleaning	○	○	○	●	○
Overall Rating	○	○	○	●	○

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I love this product. The containers are clear making it easy to identify contents. The containers stack easily in the cupboard and refrigerator. It is great to have a container I can leave the cover on to heat in the microwave without warping. The containers are easy to wash too.

Best feature(s): *No stains from sauces or chili!*

Suggested Improvement(s): *I'd love to see canisters for sugar, flour, etc using this design.*

Additional comments

I have arthritis in my hands & these are easy (and not painful) to use.

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